

**The Toledo Blade Company and Toledo Typographical Union No. 63.** Case 8-CA-16067

January 31, 1991

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMEBERS  
CRACRAFT AND OVIATT

On June 15, 1989, the National Labor Relations Board issued a Decision and Order<sup>1</sup> in this proceeding. The Board held that the Respondent's proposed contract provision permitting the Respondent to offer retirement and/or separation incentives directly to individual employees without the Union's participation, and under which provision the Union would expressly waive its right to dispute or arbitrate with respect to the incentives, was a mandatory subject of bargaining. The Board found, therefore, that the Respondent's insistence to impasse on the proposal did not violate Section 8(a)(5) and (1) of the National Labor Relations Act. Accordingly, the Board dismissed the complaint.

In an opinion July 17, 1990,<sup>2</sup> the United States Court of Appeals for the District of Columbia Circuit found the clause to be a nonmandatory subject of bargaining, and the Respondent's insistence to impasse on it a violation of Section 8(a)(5). The court remanded the case to the Board for further proceedings consistent with its findings. The Board advised the parties that it had accepted the remand, and invited them to file statements of position. Statements of position were received from the General Counsel, the Union, and the Respondent.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We accept the court's remand as the law of the case. Accordingly, we conclude that because the proposed retirement and separation incentive provision has been found by the court to be a nonmandatory subject of bargaining, the Respondent's insistence to impasse on that provision was in violation of Section 8(a)(5) and (1) of the Act. Accordingly, we shall issue Amended Conclusions of Law, a modified Order, and a notice to employees.

**AMENDED CONCLUSIONS OF LAW**

By refusing to bargain with Toledo Typographical Union No. 63, as the exclusive representative of the employees in the appropriate bargaining unit, by insisting to impasse on its retirement and separation incentive proposal, a nonmandatory subject of bargaining, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

<sup>1</sup> 295 NLRB 626 (Chairman Stephens dissenting).

<sup>2</sup> 907 F.2d 1220, cert. denied January 14, 1991.

**REMEDY**

Having found that the Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist and take certain affirmative action designed to effectuate the policies of the Act. We shall order that, on request, the Respondent bargain with the Union and, if an understanding is reached, that it embody the understanding in a signed agreement.

**ORDER**

The National Labor Relations Board orders that the Respondent, The Toledo Blade Company, Toledo, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Toledo Typographical Union No. 63, as the exclusive representative of the employees in the following appropriate unit, by insisting to impasse on a nonmandatory subject of bargaining:

All employees performing composing room work, including classifications such as: Hand compositors; type-setting machine operators; makeup men; bank men; markup men; lineup and lockup men; stonehands; proofpress operators; proofreaders; machinists for typesetting machines; operators and machinists on all mechanical and electro-mechanical devices which cast or compose type, slugs, or film; operators of tape perforating machines and recutter units for use in composing or producing type, operators of all phototypesetting machines (such as Fotosetter, Photon, Linofilm, A.T.F. Typesetter, Monophoto, Coxhead Liner, Filмотype, Typro and Hadege); employees engaged in proofing, waxing and paste-makeup with reproduction proofs, processing the product of phototypesetting machines, including development and waxing, paste-makeup of all type, handlettered, illustrative, border and decorative material constituting a part of the copy; ruling; photo-proofing; correction, alteration and imposition of the paste-makeup serving as the completed copy for the camera used in the plate-making process, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its facility in Toledo, Ohio, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Toledo Typographical Union No. 63, as the exclusive collective-bargaining representative of our employees in the following appropriate unit, by insisting to impasse on a nonmandatory subject of bargaining:

All employees performing composing room work, including classifications such as: Hand compositors; type-setting machine operators; makeup men; bank men; markup men; lineup and lockup men; stonehands; proofpress operators; proofreaders; machinists for typesetting machines; operators and machinists on all mechanical and electro-mechanical devices which cast or compose type, slugs, or film; operators of tape perforating machines and recutter units for use in composing or producing type, operators of all phototypesetting machines (such as Fotosetter, Photon, Linofilm, A.T.F. Typesetter, Monophoto, Coxhead Liner, Filmotype, Typro and Hadege); employees engaged in proofing, waxing and paste-makeup with reproduction proofs, processing the product of phototypesetting machines, including development and waxing, paste-makeup of all type, handlettered, illustrative, border and decorative material constituting a part of the copy; ruling; photo-proofing; correction, alteration and imposition of the paste-makeup serving as the completed copy for the camera used in the plate-making process, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

THE TOLEDO BLADE COMPANY